REMARKS

This is a full and timely response to the final Office Action of September 20, 2005. Reexamination, reconsideration, and allowance of the application and all presently pending claims are respectfully requested.

Upon entry of this Third Response, claims 1-38 are pending in this application. Claims 9 and 10 are directly amended herein, and claims 34-38 are newly added. It is believed that the foregoing amendments add no new matter to the present application.

Attorney Docket Number

Since the filing of the instant application, the power of attorney has been changed to a new law firm, Thomas, Kayden Horstemeyer & Risley, L.L.P. ("TKHR"). Applicants respectfully request that the attorney docket number of the instant application be changed to "710101-1020" to reflect the number used by TKHR.

Response to §102 Rejections

A proper rejection of a claim under 35 U.S.C. §102 requires that a single prior art reference disclose each element of the claim. See, *e.g.*, *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983).

Claim 1

Claim 1 presently stands rejected under 35 U.S.C. §102 as allegedly being anticipated by *Shah* (U.S. Patent Application Publication No. 2003/0208572 A1). Claim 1 presently reads as follows:

> 1. A communication system, comprising:
> a plurality of clients;
> a plurality of network elements; and
> an element management system (EMS) interfaced with the clients and the network elements, the EMS configured to track which of the network elements are of interest to the clients, ***the EMS further configured to automatically monitor the network elements based on which of the network elements are determined, by the EMS, to be of interest to the clients***, the EMS further configured to provide the clients with information indicative of the monitored elements. (Emphasis added).

Applicants respectfully assert that *Shah* fails to disclose at least the features of claim 1 highlighted hereinabove. Accordingly, the 35 U.S.C. §102 rejection of claim 1 is improper.

In this regard, it is alleged in the Office Action that the "subnet manager" and "subnet administrator" of *Shah* constitute the "EMS" recited by claim 1. Further, the "subnet manager" of *Shah* appears to monitor data paths in a network. When a new data path is created or an existing data path is destroyed, the "subnet manager" apparently determines which clients are interested in the newly created or destroyed data path and notifies these clients about the newly created or destroyed data path. See Paragraphs 37, 39, 43, and 44. Thus, the reporting of detected data path changes appears to be based on which clients are interested in which detected data path changes. However, there is nothing in *Shah* to indicate that the ***monitoring*** of the data paths is in any way based on which of the clients are interested in the data paths. Indeed, the "subnet manager" apparently determines which of the clients are interested in a data path change ***after*** the data path change has been detected. See Figure 7, blocks 812 and 814. Thus, the monitoring of the data

paths by the "subnet manager" appears to be the same regardless of which clients are interested in which data paths (see Paragraphs 58-59), and only the ***reporting*** of the detected data path changes appears to based on the interests of the clients. Accordingly, there is nothing in *Shah* to indicate that the alleged "EMS" is configured to "automatically monitor the network elements based on which of the network elements are determined, by the EMS, to be of interest to the clients," as described by claim 1.

For at least the above reasons, Applicants respectfully assert that *Shah* fails to disclose each feature of claim 1. Therefore, the 35 U.S.C. §102 rejection of claim 1 should be withdrawn.

Claims 2-10, 27-31, and 34-38

Claims 2-10 and 27-31 presently stand rejected in the Office Action under 35 U.S.C. §102 as allegedly being anticipated by *Shah*. Further, claims 34-38 have been newly added via the amendments set forth herein. Applicants submit that the pending dependent claims 2-10, 27-31, and 34-38 contain all features of their respective independent claim 1. Since claim 1 should be allowed, as argued hereinabove, pending dependent claims 2-10, 27-31, and 34-38 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Furthermore, these dependent claims recite patentably distinct features and/or combinations of features that make them allowable, notwithstanding the allowability of their base claim 1.

For example, claim 6 presently reads as follows:

> 6. The system of claim1, wherein the EMS is configured to store graphical user interface (GUI) code defining a GUI associated with one of the network elements, ***the EMS configured to retrieve the GUI code in response to a request received from one of the clients and to transmit the retrieved GUI code to the one client***, wherein the request identifies the one network element. (Emphasis added).

In rejecting claim 6, it is asserted in the Office Action that the above features of claim 6 are disclosed at Paragraph 49, lines 5-15, of *Shah*. Such a paragraph of *Shah* apparently discloses a GUI. However, there is nothing in this paragraph of *Shah* to indicate that the code defining the GUI is transmitted by the alleged "EMS" to any of the alleged "clients."

In responding to Applicants' arguments with respect to claim 6 in the First Response filed on June 13, 2005, it is asserted in the outstanding Office Action that:

> "In response to the argument that 'the code defining the GUI' limitation is not taught by US Application Publication No. 2003/0208572 by Shah et al. Shah teaches about a fabric GUI that is used to display changes in fabric-attached devices (Paragraph 45, lines 1-3) (Paragraph 46, lines 1-5) (Paragraph 49, lines 1-14). For the GUI to be updated from the subnet management software there has to be an underlining code that cause the GUI to change its display."

Applicants agree that there is "underlining code that cause the GUI to change its display." However, there is nothing in *Shah* to indicate that such "underlining code" is transmitted from the alleged "EMS" to any alleged "client." Indeed, it appears that data, not "code," is transmitted from the "subnet manager" when the GUI is to change its display. See Paragraph 62, lines 5-9.

For at least the above reasons, Applicants respectfully assert that *Shah* fails to disclose at least the features of claim 6 highlighted above, and the 35 U.S.C. §102 rejection of claim 6 should be withdrawn, notwithstanding the allowability of independent claim 1.

In addition, claim 7 presently reads as follows:

> 7. The system of claim 6, wherein the EMS is configured to enable a user to ***update the stored GUI code***, and wherein the EMS is further configured ***to detect an update to the stored GUI code and to transmit the updated GUI code*** to the one client in response to a detection of the update. (Emphasis added).

In rejecting claim 7, it is asserted in the Office Action that the above features are disclosed at Paragraph 49, lines 1-15, of *Shah*. However, such a paragraph of *Shah* appears to describe a

network topology change, which apparently occurs while the alleged GUI is running. In such an example, the alleged GUI updates the ***data*** being manipulated by the GUI. However, there is nothing in Paragraph 49 to indicate that the ***code*** defining the GUI is updated in any way. Accordingly, *Shah* fails to disclose at least the features of claim 7 highlighted above, and the 35 U.S.C. §102 rejection of claim 7 should be withdrawn, notwithstanding the allowability of independent claim 1.

Further, claim 10 recites "wherein the one client is configured to discard the GUI code transmitted to the one client upon closing the GUI." Applicants respectfully assert that *Shah* fails to disclose such features.

In this regard, it is alleged in the Office Action that:

> "In claim 10, Shah teaches about a system of claim 9, wherein the one client is configured to discard the GUI code transmitted to the one client upon closing the GUI (Paragraph 49, lines 1-15). Without a TCP/IP session all intended data transfer is discarded."

Even if it is assumed *arguendo* that "(w)ithout a TCP/IP session all intended data transfer is discarded," as alleged in the Office Action, Applicants respectfully assert that *Shah* still fails to disclose each feature of pending claim 10. In particular, the Office Action alleges that *Shah* discloses ***data*** being discarded. Claim 10, however, recites that a client is configured to discard "GUI ***code***." (Emphasis added). Accordingly, the Office Action fails to establish a *prima facie* rejection under 35 U.S.C. §102, and claim 10, therefore, should be allowed, notwithstanding the allowability of independent claim 1.

Claim 27 presently reads as follows:

> 27. The communication system of claim 1, wherein the EMS is configured to ***begin*** monitoring at least one of the network elements in response to a determination by the EMS that at least one of the clients is currently interested in the at least one network element. (Emphasis added).

In rejecting claim 27, it is asserted in the Office Action that the above features are disclosed at Paragraph 44, lines 1-13, of *Shah*. Applicants respectfully disagree.

In this regard, as set forth above in the arguments for allowance of claim 1, it is alleged in the Office Action that the "subnet manager" and "system administrator" of *Shah* constitute the "EMS" recited by the pending claims, and it appears that the "subnet manager" of *Shah* discovers topology changes regardless of which of the alleged "network elements" are of interest to the alleged "clients." Thus, it appears that the "subnet manager" monitors each of the alleged "network elements" regardless of whether any alleged "client" has subscribed to a trap for the respective "network element" according to Paragraph 41, lines 1-6, of *Shah*. See Paragraphs 58-59. Moreover, there is nothing in *Shah* to indicate that the "subnet manager" is configured to ***begin*** monitoring any of the alleged "network elements" based on the interests of the alleged "clients." Indeed, the description at paragraph 44 of *Shah* indicates that the alleged "clients" may be notified of detected topology changes based on the interests of the clients, but nothing in paragraph 44 indicates that the "subnet manager" is configured to "begin" monitoring of any of the alleged "network elements" based on such interests.

Accordingly, *Shah* fails to disclose at least an "EMS" that is "configured to ***begin*** monitoring at least one of the network elements ***in response*** to a determination by the EMS that at least one of the clients is currently interested in the at least one network element," as recited by claim 27.

(Emphasis added). For at least the foregoing reasons, Applicants respectfully assert that *Shah* fails to disclose each feature of claim 27, and the 35 U.S.C. §102 rejection of claim 27 should, therefore, be withdrawn, notwithstanding the allowability of independent claim 1.

Claim 28 presently reads as follows:

> 28. The communication system of claim 1, wherein the EMS is configured to ***poll the network elements based on which of the network elements are determined, by the EMS, to be of interest to the clients***. (Emphasis added).

In rejecting claim 28, it is asserted in the Office Action that the above features are disclosed at Paragraph 44, lines 1-13, of *Shah*. Applicants respectfully disagree.

In this regard, as set forth above in the arguments for allowance of claim 1, it is alleged in the Office Action that the "subnet manager" and "system administrator" of *Shah* constitute the "EMS" recited by the pending claims, and it appears that this "subnet manager" monitors each of the alleged "network elements" regardless of whether any alleged "client" has subscribed to a trap for the respective "network element" according to Paragraph 41, lines 1-6, of *Shah*. See Paragraphs 58-59. Moreover, there is nothing in *Shah* to indicate that the polling of the alleged "network elements" performed by the "subnet manager" is based, in any way, on the interests of the alleged "clients." Indeed, the description at paragraph 44 of *Shah* indicates that the alleged "clients" may be notified of detected topology changes based on the interests of the clients, but nothing in paragraph 44 indicates that the polling of the alleged "network elements" is affected by such interests.

Accordingly, *Shah* fails to disclose at least an "EMS" that is "configured to poll the network elements ***based on which of the network elements are determined, by the EMS, to be of interest to the clients***," as recited by claim 28. (Emphasis added). For at least the foregoing reasons,

Applicants respectfully assert that *Shah* fails to disclose each feature of claim 28, and the 35 U.S.C. §102 rejection of claim 28 should, therefore, be withdrawn, notwithstanding the allowability of independent claim 1.

In addition, claim 30 reads as follows:

> 30. The communication system of claim 1, wherein the EMS is configured to receive, from one of the clients, a ***command for changing a configuration of one of the network elements*** identified by the command, and wherein the EMS is configured to ***change the configuration of the one network element in response to the command***. (Emphasis added).

Applicants respectfully assert that *Shah* fails to disclose at least the features of claim 30 highlighted hereinabove. Thus, the 35 U.S.C. §102 rejection of claim 30 is improper.

In rejecting claim 30, it is asserted in the Office Action that the features of this claim are disclosed by *Shah* at Paragraph 46, lines 1-5. Such a paragraph of *Shah* indicates that "subnet management software should define client friendly filters that clients can use to request notification only for events that are interesting to the client." Such "filters" apparently affect whether a "client" receives notification of a topology change (*e.g.*, when the configuration of an alleged "network element" changes), but there is nothing in *Shah* to indicate that the configuration of any of the alleged "network elements" being monitored by the "subnet manager" is changed based on how the "filters" are defined. Thus, *Shah* fails to disclose that the configuration of any of the alleged "network elements" is changed "in response" to any "command" that is possibly transmitted to the "subnet manager" according to Paragraph 46 of *Shah*.

Therefore, the Office Action fails to establish that the alleged "EMS" is configured to "receive, from one of the clients, a ***command for changing a configuration of one of the network elements*** identified by the command, and wherein the EMS is configured to ***change the***

configuration of the one network element in response to the command," as recited by claim 30. (Emphasis added). For at least the foregoing reasons, Applicants respectfully assert that *Shah* fails to disclose each feature of claim 30, and the 35 U.S.C. §102 rejection of claim 30 should, therefore, be withdrawn, notwithstanding the allowability of independent claim 1.

Claim 11

Claim 11 presently stands rejected under 35 U.S.C. §102 as allegedly being anticipated by *Shah*. Claim 11 presently reads as follows:

> 11. An element management system (EMS) for managing elements of a communication network, comprising:
> ***means for tracking which of the network elements are of interest to a plurality of clients;***
> ***means for automatically monitoring the network elements of interest to the clients based on the tracking means***; and
> means for providing the clients with information indicative of the monitored elements. (Emphasis added).

For at least reasons similar to those set forth in the arguments for allowance of claim 1, Applicants respectfully assert that *Shah* fails to disclose at least the features of claim 11 highlighted hereinabove. Accordingly, the 35 U.S.C. §102 rejection of claim 11 should be withdrawn.

Claims 12-16

Claims 12-16 presently stand rejected in the Office Action under 35 U.S.C. §102 as allegedly being anticipated by *Shah*. Applicants submit that the pending dependent claims 12-16 contain all features of their respective independent claim 11. Since claim 11 should be allowed, as argued hereinabove, pending dependent claims 12-16 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Furthermore, these dependent

claims recite patentably distinct features and/or combinations of features that make them allowable, notwithstanding the allowability of their base claim 11.

For example, claim 15 presently reads as follows:

> 15. The system of claim 11, further comprising:
> means for storing graphical user interface (GUI) code defining a GUI associated with one of the network elements;
> means for retrieving the GUI code in response to a request received from one of the clients; and
> ***means for transmitting the retrieved GUI code to the one client***,
> wherein the request identifies the one client. (Emphasis added).

For at least reasons similar to those set forth in the arguments for allowance of claim 6, Applicants respectfully assert that *Shah* fails to disclose at least the features of claim 15 highlighted hereinabove. Accordingly, the 35 U.S.C. §102 rejection of claim 15 is improper and should be withdrawn, notwithstanding the allowability of independent claim 11.

Claim 17

Claim 17 presently stands rejected under 35 U.S.C. §102 as allegedly being anticipated by *Shah*. Claim 17 presently reads as follows:

> 17. A method for managing elements of a communication network, comprising the steps of:
> ***tracking which of the network elements are of interest to a plurality of clients;***
> ***automatically monitoring the network elements based on the tracking step***; and
> providing the clients with information indicative of the monitored elements. (Emphasis added).

For at least reasons similar to those set forth in the arguments for allowance of claim 1, Applicants respectfully assert that *Shah* fails to disclose at least the features of claim 17 highlighted hereinabove. Accordingly, the 35 U.S.C. §102 rejection of claim 17 should be withdrawn.

Claims 18-26, 32, and 33

Claims 18-26, 32 and 33 presently stand rejected in the Office Action under 35 U.S.C. §102 as allegedly being anticipated by *Shah*.. Applicants submit that the pending dependent claims 18-26, 32, and 33 contain all features of their respective independent claim 17. Since claim 17 should be allowed, as argued hereinabove, pending dependent claims 18-26, 32, and 33 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Furthermore, these dependent claims recite patentably distinct features and/or combinations of features that make them allowable, notwithstanding the allowability of their base claim 17.

For example, claim 22 presently reads as follows:

> 22. The method of claim 17, further comprising the steps of:
> ***storing graphical user interface (GUI) code remotely from the clients***, the GUI code defining a GUI associated with one of the network elements;
> ***retrieving the GUI code in response to a request received from one of the clients***; and
> ***transmitting the retrieved GUI code to the one client,***
> wherein the request identifies the one network element. (Emphasis added).

For at least reasons similar to those set forth in the arguments for allowance of claim 6, Applicants respectfully assert that *Shah* fails to disclose at least the features of claim 22 highlighted hereinabove. Accordingly, the 35 U.S.C. §102 rejection of claim 22 is improper and should be withdrawn, notwithstanding the allowability of independent claim 17.

In addition, claim 23 presently reads as follows:

23. The method of claim 22, further comprising the steps of:
enabling a user to ***update the stored GUI code***;
detecting ***an update to the stored GUI code***; and
transmitting ***the updated GUI code*** to the one client in response to the detecting step. (Emphasis added).

For at least reasons similar to those set forth in the arguments for allowance of claim 7, Applicants respectfully assert that *Shah* fails to disclose at least the features of claim 23 highlighted hereinabove. Accordingly, the 35 U.S.C. §102 rejection of claim 23 is improper and should be withdrawn, notwithstanding the allowability of independent claim 17.

Claim 26 recites the step of "discarding, in response, to the closing step, the GUI ***code*** transmitted to the one client." (Emphasis added). For at least reasons similar to those set forth above in the arguments for allowance of claim 10, Applicants respectfully assert that *Shah* fails to disclose at least the foregoing features of claim 10. Accordingly, the 35 U.S.C. §102 rejection of claim 26 is improper and should be withdrawn, notwithstanding the allowability of independent claim 17.

Claim 32 recites the step of "***initiating*** monitoring of at least one of the network elements in response to a determination that at least one of the clients is currently interested in the at least one network element." (Emphasis added). For at least reasons similar to those set forth above in the arguments for allowance of claim 27, Applicants respectfully assert that *Shah* fails to disclose at least the foregoing features of claim 32. Accordingly, the 35 U.S.C. §102 rejection of claim 32 is improper and should be withdrawn, notwithstanding the allowability of independent claim 17.

Claim 33 recites the step of "polling the network elements based on the tracking step." For at least reasons similar to those set forth above in the arguments for allowance of claim 28, Applicants respectfully assert that *Shah* fails to disclose at least the foregoing features of claim 33.

Accordingly, the 35 U.S.C. §102 rejection of claim 33 is improper and should be withdrawn, notwithstanding the allowability of independent claim 17.

CONCLUSION

Applicants respectfully request that all outstanding objections and rejections be withdrawn and that this application and all presently pending claims be allowed to issue. If the Examiner has any questions or comments regarding Applicants' response, the Examiner is encouraged to telephone Applicants' undersigned counsel.

Respectfully submitted,

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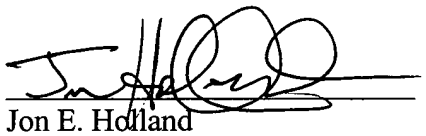
By: 

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